

**REMARKS**

**STATUS OF THE CLAIMS**

Claims 1-258 remain pending in the application. Claims 28-73, 99-178, and 199-238 have been withdrawn from consideration by the Examiner. Of the claims that were examined (i.e., claims 1-27, 74-98, 179-198, and 239-258), claims 1 and 74 are independent.

In the Office Action, claims 4, 5, 26, 77, 78, 97, 189, and 249 were rejected under 35 U.S.C. § 112, second paragraph, as being allegedly indefinite. In addition, claims 1-6, 8, 10-16, 19-27<sup>1</sup>, 74-81, 83-98, 179-186, 189, 190, 192, 194-198, 239-247, 249, 250, 252, and 254-258 were rejected under 35 U.S.C. § 102(e) as being anticipated by Marapane et al. (U.S. Patent Application No. 2002/0010556; "Marapane"). Also, claims 7, 9, 17, 18, 82, 187, 188, 191, 193, 247, 248, 251, and 253 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Marapane.

**REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH**

With regard to the claim rejection under 35 U.S.C. § 112, second paragraph, the Office Action asserts that the terms "best," "substantially entirely," and "substantially," as recited in claims 4, 5, 77, and 78, claims 26, 97, 189, and 249, and claims 190 and 250, respectively, are undefined, relative terms that render the respective claims indefinite. Although Applicant respectfully disagrees with the claim rejections and the assertions regarding the claim terms, Applicant has amended claims 4, 5, 77, and 78 by replacing

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<sup>1</sup> Applicant notes that although claim 17 was listed in the § 102(e) rejection statement and not in the § 103(a) rejection statement, claim 17 was discussed only in the § 103(a) rejection. Therefore, for purposes of this response, Applicant will consider claim 17 and claim 18, which depends therefrom, to have been rejected under § 103(a).

the term “best” with “most closely.” In addition, Applicant has amended claims 26, 97, 189, and 249, and claims 190 and 250 by respectively replacing the phrase “at least substantially entirely” and the term “substantially” with the phrase “at least in part.”

Applicant respectfully submits that there is no ambiguity as to the scope of the terms “most closely” and “at least in part.” (None of these amendments narrows the claim scope.) Accordingly, the § 112, second paragraph, rejection of claims 4, 5, 77, and 78, claims 26, 97, 189, and 249, and claims 190 and 250 should be withdrawn.

#### **REJECTION UNDER SECTION 102(e)**

Applicant respectfully submits that the rejection of claims 1-6, 8, 10-16, 19-27, 74-81, 83-98, 179-186, 189, 190, 192, 194-198, 239-247, 249, 250, 252, and 254-258 under 35 U.S.C. § 102(e) as being anticipated by Marapane should be withdrawn because Marapane does not disclose all the recitations of independent claims 1 and 74. For example, Marapane does not disclose a method for providing hair tinting information including, among other things, “providing information relating to a plurality of hair tinting products” or “receiving third information representative of the subject’s selection of at least one hair tinting product in the plurality of hair tinting products,” as recited in claim 1. (Emphasis added). Rather, Marapane discloses identifying and displaying “achievable end colors from which the recipient will be prompted to select.” Page 4, paragraph [0045]; see also Fig. 1, block 180. (Emphasis added). Further, Marapane discloses prompting a recipient to select from the displayed achievable end colors (paragraphs [0032] and [0045]; block 190), and recommending to the consumer a hair coloring agent based on the consumer’s selection at 190 (paragraph [0032]; block 200). Therefore, Marapane fails to disclose all of the recitations of claim 1 at least because Marapane discloses displaying a plurality of colors from which to choose rather than

“providing information relating to a plurality of tinting products” from which to choose, as recited in claim 1.

Only after a consumer has selected a desired end hair color (step 190) does Marapane provide any information about a product. (See Fig. 12.) However, Marapane appears to only provide information about a single product (that achieves the selected desired end hair color). Id. Thus, Marapane does not provide “information about a plurality of hair tinting products,” as recited in claim 1. (Emphasis supplied). Accordingly, the § 102(e) rejection of claim 1 should be withdrawn.

With regard to claim 74, Applicant has amended claim 74 to read as follows:

74. A method for providing hair tinting information, comprising successively:

- receiving first information representative of at least one state of a subject's hair;
- providing, based on at least the first information, at least one type of color result;
- receiving second information representative of a desired type of color result of the subject; and
- providing, based on at least the first information and the second information, information relating to at least one hair tinting product.

(Emphasis added). Applicant respectfully points out that in claim 74, as amended, the recited “providing, based on at least the first information, at least one type of color result” occurs prior to the recited “receiving . . . information representative of a desired type of color result.” Marapane does not teach this sequence of features. For example, Marapane discloses that a type of color result based on information representative of at least one state of a subject's hair is not provided until step 180, wherein “achievable end

hair colors” are displayed “based on the input from the steps described in blocks 120 through 170.” Paragraph [0032].

Although Marapane discloses displaying hair color families at step 170 prior to receiving information representative of a desired type of color result in step 180, Marapane does not disclose that the displaying of hair color families is based on “information representative of at least one state of a subject’s hair,” as recited in claim 74. Only the end hair colors displayed by Marapane in step 180 are disclosed as being “achievable” and based on input in block 160. Paragraph [0032]. Therefore, it appears that at step 170 Marapane displays all hair color families in the system and does not base the display of end hair colors on the subject’s natural hair color until step 180. In contrast, claim 74 defines a method including, among other things, providing “at least one type of color result” based on “information representative of at least one state of a subject’s hair” before “receiving . . . information representative of a desired type of color result.”

Moreover, although Marapane mentions that the steps set forth in blocks 120 through 170 “may actually be performed in any order relative to one another” (paragraphs [0031] and [0033]), there is no teaching that steps set forth in blocks 120 through 170 would provide “at least one type of color result” based on “information representative of at least one state of a subject’s hair” before “receiving . . . information representative of a desired type of color result,” as recited in claim 74, because, as noted above, Marapane does not disclose displaying achievable end hair colors determined based on input from step 160 until step 180.

**REJECTION UNDER SECTION 103(a)**

The § 103(a) rejection of claims 7, 9, 17, 18, 82, 187, 188, 191, 193, 247, 248, 251, and 253 based on Marapane should be withdrawn because the Office Action fails to establish a prima facie case of obviousness with respect to these claims. Each of these claims is dependent upon either independent claim 1 or 74. Therefore, in light of the above-noted deficiencies of Marapane with respect to claims 1 and 74, Marapane fails to disclose all the recitations of claims 7, 9, 17, 18, 82, 187, 188, 191, 193, 247, 248, 251, and 253. Further, there is no motivation, suggestion, or teaching in Marapane or any other source to modify Marapane in a manner that would cure the deficiencies noted above with respect to independent claims 1 and 74. Additionally, these dependent claims include further limitations that distinguish from the cited art. For at least these reasons, a prima facie case of obviousness has not been established with respect to claims 7, 9, 17, 18, 82, 187, 188, 191, 193, 247, 248, 251, and 253. Accordingly, the § 103(a) rejection of these claims should be withdrawn.

**Conclusion**

For at least the foregoing reasons, Applicant respectfully submits that each of independent claims 1 and 74 is allowable. In addition, each of claims 2-27, 75-98, 179-198, and 239-258 ultimately depends from one of these allowable independent claims and, therefore, should be allowable for the same reasons that the respective claim from which it depends is allowable.

The Office Action contains characterizations and conclusions regarding the related art and Applicant's claims with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any such characterizations and conclusions.

In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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By: 

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